

REMARKS

Applicant would like to thank Examiner Huynh for the phone call on January 4, 2005 during which Examiner Huynh indicated that the system claims, claims 72-75 and 78-81, are allowable. Applicant has amended claims 101, 103, and 105 to include further structural details to further clarify the claimed invention. Claims 72-75, 78-81, and 101-111 are allowable.

Although Applicant believes that claim 71 is allowable in view of the arguments below, Applicant requests that claim 71 be canceled without prejudice in order to expedite allowance and issue.

Claim Rejections – 35 U.S.C. § 103 (MacDowell and Leblanc)

The Patent Office rejected claim 71 under 35 U.S.C. § 103(a) as being unpatentable over MacDowell (U.S. Patent No. 6,174,351) in view of Leblanc (U.S. Patent No. 5,067,327). To rely on a reference under 35 U.S.C. § 103, it must be analogous art. MPEP § 2141.01(a). "In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ.2d 1443, 1445 (Fed. Cir. 1992).

Leblanc discloses a refrigerant recovery and recharging device. Referring to Figure 1, Leblanc discloses a system including a refrigerant circuit compressor (18), a compressor (40), and an aluminum tank (42) cooled by a fan (82). In essence, when the refrigerant circuit is "dead" and needs recharging, the compressor (40) is activated and draws the refrigerant from the refrigerant circuit through conduit (28a) in vapor form and eventually forces the refrigerant vapor into the tank (42). The vapor is either cooled by liquid refrigerant in the tank (42) or most likely cooled to a liquid form by condensing on the walls of the tank (42), which are cooled by the fan (82). The liquid refrigerant from the tank (42) is then used by the refrigeration circuit, thereby "recharging" the refrigerant circuit.

Leblanc is clearly not in the field of Applicant's endeavor. Applicant's field of endeavor is a fuel dispensing environment capable of reducing vapor pressure in the ullage of an underground storage tank. Leblanc's field of endeavor is refrigerant recovery and recharging a refrigerant circuit. Thus, the first prong of the test for "analogous art" is not satisfied.

Leblanc is also not “reasonably pertinent to the particular problem with which the inventor was concerned.” “A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor’s endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor’s attention in considering his problem.” Applicant’s problem was reducing vapor pressure in the ullage of an underground storage tank. Thus, Applicant’s invention is focused on reducing pressure in the ullage of the underground storage tank by cooling the vapors in the ullage. Leblanc teaches recovery of refrigerant in a refrigerant circuit and recharging the refrigerant circuit. Accordingly, Leblanc teaches cooling refrigerant vapors cool the vapors to their liquid state, thereby recharging the refrigerant circuit. Leblanc does not teach cooling the vapors for the purpose of reducing vapor pressure. Accordingly, Leblanc, which focuses of cooling refrigerant vapors into their liquid state in order to recharge a refrigerant circuit, would not have logically commended itself to an inventor’s attention when considering the problem of reducing vapor pressure in the ullage of an underground storage tank in a fueling environment. Thus, the second prong of the test for “analogous art” is not satisfied.

Since Leblanc is not either “in the field of applicant’s endeavor” or “reasonably pertinent to the particular problem with which the inventor was concerned,” Leblanc is not analogous art. Accordingly, the rejection of claim 71 can not stand. However, as stated above, Applicant has canceled claim 71, without prejudice, in order to expedite allowance and issue.

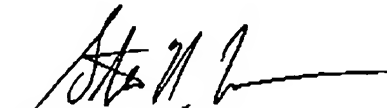
Conclusion

In view of the discussion above, claims 72-75, 78-81, and 101-111 are allowable. Reconsideration is respectfully requested. If any issues remain, the examiner is encouraged to contact the undersigned attorney of record to expedite allowance and issue.

Respectfully submitted,

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